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No. 90-1912

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1990

STEPHANIE NORDLINGER,
Petitioners,

VS.

KENNETH HAHN, etc., et al.
Respondents.

Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District

AMICUS CURIAE BRIEF OF THE STATE OF CALIFORNIA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INTEREST OF AMICUS CURIAE

The State of California, on behalf of the California State Board of Equalization, submits this brief pursuant to Rule 37 as amicus curiae in support

of respondent Los Angeles County and in opposition to the petition for writ of certiorari.

The California State Board of Equalization performs specified powers and duties with regard to real property taxation prescribed under Proposition 13 and other laws of the State of California. These powers and duties are generally set forth in the California Government Code. The Board prescribes rules and regulations to govern local boards of equalization when equalizing assessments and assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation. Calif. Gov. Code § 15606(c), (e). The Board also instructs and directs assessors as to their duties (Calif. Govt. Code § 15608) and determines the adequacy of the procedures and practices employed by a county assessor in the

valuation of property for the purposes of taxation (Calif. Govt. Code § 15640).

Two decisions frequently referred to in this brief are Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208 and Allegheny Pittsburgh Coal Co. v. County Com'n 488 U.S. 336 (1989) These decisions will commonly be referred to as "Amador" and Allegheny".

INTRODUCTION

The decision of the court below (Pet. Cert. App. A) and other decisions of the California courts establish that the principles of the Equal Protection Clause and the decisions of this Court applying that clause to state taxation issues have been carefully and accurately applied to the California system of real property taxation and that neither the Allegheny decision nor the petition for certiorari in this

proceeding justifies review by this Court.

With respect to an earlier attack on the system of real property taxation under Article XIIIA of the California Constitution (also known as Proposition 13), the California Supreme Court in Amador found Proposition 13 constitutional as against an equal protection challenge. Petitioner Nordlinger claims that the United States Supreme Court in Allegheny has found unconstitutional a taxing system operating almost identically to the California taxing system and expressly recognized that its ruling cast doubt on the validity of California's method. Pet. Cert. pp. 11-12. This is a totally faulty premise. There was no state taxation system in Allegheny analogous to California's system; thus Allegheny does not require a revision of the California courts' holdings.

This brief later contains more extensive discussion of the Allegheny case. Preliminarily, this Court there held that there was a denial of equal protection where West Virginia's own constitutional requirements that taxation was to be equal and uniform throughout the state, and that property was to be taxed according to its estimated market value, were violated by Webster County assessment practices. The County's practice valued the plaintiff coal company's real property on the basis of its recent purchase price, but made only minor modifications in the assessments of comparable lands which had not been recently sold -- this practice resulted in gross disparities on the order of 8 and 35 to 1 in the assessed value of generally comparable property and would require more than 500 years for equalization of assessments as required by the West Virginia constitution. Allegheny, supra, 341-342.

The Supreme Court expressly noted in its footnote 4 that its opinion did

> "not decide whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIIIA of its Constitution, popularly known as 'Proposition 13.' Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred, constructed upon, or in a limited manner for inflation. Cal. Const., Art. XIII A, Sec. 2 (limiting inflation adjustments to 2% per year.) The system is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property."

Allegheny, supra, 344-345.

This court on June 3, 1991 granted certiorari in R. H. Macy & Co., Inc. v. Contra Costa County, U.S.S.Ct. No. 90-1603, wherein the constitutionality of Proposition 13 was placed in

question under both the equal protection and commerce clauses. That grant of certiorari may evidence the importance of property taxation to large segments of the population and the state and that this court had never ruled upon a state-adopted specific system such as is found in Proposition 13.

But it is respectfully submitted that California's system does not result in invidious discrimination and that the prior decisions of this Court, which recognize the board powers of the state to impose and collect taxes and make classifications in respect thereto, demonstrate that certiorari here ought to be denied.

It is the State of California's position that its system of real property taxation based upon a fair market value at the time of acquisition is not arbitrary and is not in violation of the equal protection clause.

ARGUMENT

I. THE CALIFORNIA SUPREME COURT HAS PROPERLY RULED THE REAL PROPERTY TAXATION SYSTEM PRESCRIBED BY ARTICLE XIIIA DOES NOT VIOLATE THE "EQUAL PROTECTION" CLAUSE OF THE UNITED STATES CONSTITUTION; THE PETITION FOR CERTIORARI OUGHT TO BE DENIED

Article XIIIA of the California Constitution generally provides in sections 1(a) and 2(a) that "[t]he maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the . . . county assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." Section 2(b) further provides that this "full cash value base may

reflect from year to year the inflationary rate not to exceed 2 percent for any given year or . . . may be reduced to reflect . . . factors causing a decline in value."

(The phrase "acquisition value" has been sometimes used as shorthand for the specific language, "the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." This generalization should not obscure the fact that the value standard imposed generally upon a purchase or change of ownership is the full market value of the unencumbered fee simple interest, subject only to enforceable governmental restrictions. See Carlson v. Assessment Appeals Board No. I (1985) 167 Cal.App.3d 1004; Dennis v. County of Santa Clara (1989) 215 Cal.App.3d 1019.)

The California Supreme Court reviewed the equal protection implications of Proposition 13 in the Amador case and upheld the system prescribed with the following language:

> "By reason of section 2, subdivision (a) of the article, except for property acquired prior to 1975, henceforth all real property will be assessed and taxed at its value at date of acquisition rather than at current value (subject, of course, to the 2 percent maximum annual inflationary increase provided for in subdivision (b)). This 'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach. For example, a taxpayer who acquired his property for $40,000 in 1975 henceforth will be assessed and taxed on the basis of that cost (assuming it represented the then fair market value). This result is fair and equitable in that his future taxes may be said reasonably to reflect the

> price he has originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control. On the other hand, a person who paid $80,000 for similar property in 1977 is henceforth assessed and taxed at a higher level which reflects, again, the price he was willing and able to pay for that property. Seen in this light, and contrary to petitioners' assumption, section 2 does not unduly discriminate against persons who acquired their property after 1975, for those persons are assessed and taxed in precisely the same manner as those who purchased in 1975, namely, on an acquisition value basis predicated on the owner's free and voluntary acts of purchase. This is an arguably reasonable basis for assessment."

(Amador, supra, 235.)

The California Supreme Court stated its ultimate holding on the equal protection issue as follows:

> "We cannot say that the acquisition value approach incorporated in article XIII A, by which a property owner's tax liability bears a reasonable relation to his costs of acquisition, is wholly arbitrary or irrational. Accordingly, the measure under scrutiny herein meets the demands of equal protection principles."

(Amador, supra, 237.)

Petitioner contends that the Amador case merely upheld Proposition 13 against a facial equal protection challenge where no specific disparity was presented to the court. Pet. Cert. p. 16. These allegations detract in no respect from the holding of the Amador decision and that of the court below.

The Amador court recognized that a "serious and substantial" attack on Proposition 13 existed because it could result in properties of the same current market value having markedly different assessed values and gave as an example a difference in assessment of a ratio of 2-1 for comparable property acquired only two years apart. Amador, supra, 235; see also Amador, supra, 249, 251, 252 (Bird., Ch. J., dissenting) -- intentional systematic undervaluation of properties of same current worth which will vary with

the degree of property value appreciation. The Amador court's use of a 2-1 ratio in acquisition values occurring over a period of only two years belies any suggestion that the court felt that "practical uniformity" or "rough equality" would be secured in generally inflationary times.

Petitioner Nordlinger's argument that the Allegheny case found unconstitutional a system which was almost identical to that imposed by Proposition 13 (Pet. Cert. p. 11) completely ignores two controlling factors:

(1) The West Virginia constitution, unlike the California Constitution, specifically required that property taxes were to be "equal and uniform throughout the State, and ... in proportion to its value" (Allegheny, supra, 338); and

(2) The United States Supreme Court specifically stated that it was not deciding whether the California policy under Proposition 13 was a denial of equal protection.

In fact, if the Allegheny decision had merely stated a flat rule that all real property must be taxed with the same current value standard (be it current fair market value or some percentage thereof) applicable to all properties (laying aside the questions of constitutional exemptions or other value or non-value classifications), there would have been no rationale whatsoever for the Court to insert its footnote 4 referring to California's system under Proposition 13. The plain meaning of footnote 4 is that the court recognized the significant difference between the California law and the aberrational policy of Webster County vis-a-vis West Virginia law and was making

clear that the decision in the Allegheny decision should in no respect be interpreted to reach a conclusion of unconstitutionality with respect to California's system.

A. The State Of California's Broad Discretion In Classification For Purposes Of Taxation Will Only Contravene The Equal Protection Clause If The Classification In Support Of A State Goal Is Palpably Arbitrary

A recent summarization of the state's broad discretion in classification for purposes of taxation is found in the Allegheny case (p. 344):

> "The States, of course, have broad powers to impose and collect taxes. A State may divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable. Allied Stores, supra, 358 U.S., at 526-527, 79 S.Ct., at 440-441 ("The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products"). It might, for example, decide to tax property held

> by corporations, including petitioners, at a different rate than property held by individuals. See Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973) (Illinois ad valorem tax on personalty of corporations.) In each case, '[i]f the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law.' Brown-Forman Co. v. Kentucky, 217 U.S. 563, 573, 30 S.Ct. 578, 580, 54 L.Ed. 883 (1910)."

Indeed, it is to this discussion that the Court attached its footnote that it was not deciding the validity of California's policy under proposition 13 and was only looking at Webster County's assessment method which it described as aberrational to West Virginia law.

These same principles are set forth in the Amador case (pp. 233-234) with extensive citation to decisions of the United States Supreme Court.

What the Equal Protection Clause requires is that a state's classification not be arbitrary or

capricious in relation to a legitimate state interest -- that there be no invidious discrimination by the legislature. Allied Stores of Ohio v. Bowers (1959) 358 U.S. 522, 527; New Orleans v. Dukes (1976) 427 U.S. 297, 303-304; Lehnhausen v. Lake Shore Auto Parts Co., (1972) 410 U.S. 356, 359; Kahn v. Shevin (1974) 416 U.S. 351, 355 356. It is the plausible existence of a rational basis rather than its de facto use by the legislature or its specific articulation in the legislation which sustains classifications as against the Equal Protection clause. See United States Railroad Retirement Board v. Fritz (1980) 449 U.S. 166, 177-179. To use other language, if it is at least debatable whether the legislature "rationally could have believed" that the legislation would promote an objective of a legitimate state purpose, parties challenging legislation under the Equal Protection Clause cannot prevail.

Western & Southern L. I. Co. v. Bd. of Equalization (1981) 451 U.S. 648, 670, 672, 674 (emphasis by the Court).

The general principles applicable to the determination of an equal protection challenge to state tax legislation were summarized by this Court as follows:

> "We have long held that '[w]here taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.' [Citation.] A state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class. . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal constitution. [Citation.] This principle has weathered nearly a century of Supreme Court adjudication . . . ."

Kahn v. Shevin (1974) 416 U.S. 351, 355-356.

> "There is a presumption of constitutionality which can be overcome 'only by the most explicit demonstration that a

> classification is a hostile and oppressive discrimination against particular persons and classes.' . . . 'The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.'"

Lehnhausen v. Lake Shore Auto Parts Co. (1972) 410 U.S. 356, 364.

Numerous classifications have been upheld against claims of denial of equal protection, and the Allegheny decision cites Charleston Fed. Savings & Loan Assn. v. Alderson (1945) 324 U.S. 182, 190 for a collection of cases.

The Amador case points out that this state's "Legislature is empowered to grant total or partial exemptions from property taxation on behalf of various classes (e.g., veterans, blind or disabled persons, religious, hospital or charitable property; see art. XIII, § 4), despite the fact that similarly situated property may be taxed at its full value. In addition,

homeowners receive a partial exemption from taxation (art. XIII, § 3, subd. (k)) which is unavailable to other property owners. As noted previously, the state has wide discretion to grant such exemptions. (Royster Guano Co. v. Virginia, supra, 253 U.S. 412, 415 [64 L.Ed. 989, 991].)" Amador, supra, 236.

Petitioner pejoratively characterizes the California system as a "welcome stranger" system to bring it within those procedures struck down as unconstitutional where a local assessor in generally inflationary periods merely revalued and reassessed recently acquired property where state law required property to be assessed at its current fair market value. See, e.g., West Milford Tp. v. Van Decker (N.J.Super. A.D. 1989) 561 A.2d 607.

Such procedure deprived recent purchasers of property of the equal protection of the state law.

There is no question but that in inflationary times, the California system will result in properties more recently purchased being assessed at higher values than comparable property earlier acquired -- the fair market values at the substantially different times of acquisition will be different in inflationary period.

The question before this court is whether such a system denies the equal protection of the law required by the United States Constitution -- is there no rational basis for the California system's departure from a system where all properties are assessed at a current fair market value.

This system does not find infirmity through isolated comparisons such as the Beverly Hills and Venice homes referred to at pages 9-10 of the petition for certiorari.

Single isolated examples of great disparities could occur from several factors apart from the general system utilized by California.

For example,

(1) Land values could rise sharply in a given area with a modest structure thereon itself not reflecting that rise -- a simple comparison of structures is not adequate; (2) A specific property might have escaped revaluation and assessment to reflect the market value as of the 1975-1976 assessment with a limitation of time precluding later reassessment.

The "gross disparities" referred to by the court below are not specified but it should be noted that the ratio of petitioner's 1988 purchase assessment to that of assessments based on the "acquisition" values of the 1975-1976 assessment date are about 4-1. Pet. Cert. p. 6. See also Northwest Financial, Inc. v. State

Bd. of Equalization (1991) 229 Cal.App.3d 198, 201.

B. Real Property Taxation Under Proposition 13 Consists Of A Rational Approach To A Legitimate State Interest And Meets The Requirements Of The Equal Protection Clause

The California Supreme Court distinguished the operation of Proposition 13 from those United States Supreme Court cases holding that intentional and systematic undervaluation of some properties similarly situated to property in the same class which is assessed at full current value violated equal protection principles by pointing out that those cases involved

> "provisions which mandated the taxation of property on a current value basis. These cases do not purport to confine the states to a current value system under equal protection principles or to state an exception to the general rule accepted both by the United States Supreme Court and by us, as previously noted, that a tax classification or disparity of tax treatment will be sustained so long as it is

> founded upon some reasonable distinction or rational basis."

Amador, supra, 235.

Given the context of the equal protection standards discussed in the previous section of this brief, it is worth repeating the heart of the statement that the Amador court used to uphold Proposition 13 acquisition value assessment of property under the Equal Protection Clause as follows (at p. 235):

> "This 'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach. . . . [S]ection 2 does not unduly discriminate against persons who acquired their property after 1975, for those persons are assessed and taxed in precisely the same manner as those who purchased in 1975, namely, on an acquisition value basis

> predicated on the owner's free and voluntary acts of purchase [rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control.] This is an arguably reasonable basis for assessment."

It is not suggested that the administrative convenience of an acquisition value system of taxation would by itself justify deviation from rough comparability of a state system basing taxation upon current fair market value. But that administrative convenience, afforded through inexpensive and verifiable evidence as compared to the cost of periodic reassessments, would be a practical factor in a state's choice of an acquisition value system of property taxation and additional rational basis for state adoption of that system. Cf. Robert Jerome Glennon, Taxation and Equal Protection 58 Geo. Wash. L.Rev. 261, 302.

Petitioner argues that the California system of taxation of property based on acquisition value must receive heightened scrutiny because the classification is based on residence and has an inhibiting effect on interstate mobility. Pet. Cert. pp. 22-24.

The cases cited by petitioner involve state legislation with classifications specifically based on length of residency. See Zobel v. Williams (1982) 457 U.S. 55 (mineral dividend program distributed moneys to residents based on number of years of residence within the state); Hooper v. Bernalillo County Assessor (1985) 472 U.S. 612 (partial property tax exemption for certain Vietnam veterans was limited to those veterans who were residents of New Mexico prior to May 8, 1976).

Equal protection analysis applied to residency requirements is sometimes characterized as a

"right to travel." See Zobel v. Williams (1982) 457 U.S. 55, 60. This state's classification of real property taxes based on fair market value as of acquisition does not penalize or actually deter travel nor does it have that as its objective in any respect much less as a "primary" objective. Any rationale for a heightened scrutiny is completely absent. See Attorney General of New York v. Soto-Lopez (1986) 476 U.S. 898, 903 (civil service employment preference granted to veterans who were New York residents at time of entering service).

The Amador court discussed the contention that Proposition 13 would favor residents and established property owners and inhibit movement from out-of-state and from location to location in-state as follows:

"As we have explained in discussing petitioners' equal protection challenge, no penalty is imposed on the owner. The change from a current value system to an acquisition value method is intended to benefit all property owners, past and future, resident and nonresident, by reducing inflationary increases in assessments, by limiting tax rates, and by permitting the taxpayer to make more careful and accurate predictions of future tax liability. Under the former system, it was arguable that prospective purchasers of real property might have been deterred from purchasing (thereby impairing their right to travel) by reason of the unpredictable nature of future property tax liability resulting from unlimited inflationary pressures. Certainly, travel is inhibited to no greater extent by the new system, which establishes a more fixed and stable measure than that imposed by the former system of unconstrained property taxation based on current values. Accordingly, we hold that the right to travel is not unconstitutionally impaired by article XIIIA."

Amador, supra, 238.

Proposition 13 in no respect classifies the taxation of property by length or existence of residency. The classification by acquisition date, by date of change of ownership, is wholly unrelated to residency. The

right to buy property or determine when the property shall be bought or sold depends in no respect on residency. The change of ownership provision operates completely without regard to whether the owner is a resident or not. Also there is no distinction whatsoever as to length of residency. It may well be that a person who pays higher taxes because of a recent acquisition is a long-time resident whereas one who owns similar property and pays lower taxes is a non-resident or more recent resident who has owned the property for some time prior to the recent acquisition by the long-time resident. There is no discrimination under Proposition 13 such as that which was clearly aimed at newer residents and intended to favor established residents in the Zobel, Hooper and Soto-Lopez cases cited by petitioner.

CONCLUSION

The decisions of the California courts have fully and properly applied the principles of this Court's decisions in measuring state taxation under Proposition 13 against the Equal Protection Clause and the petition for certiorari does not present grounds for review by this Court.

It is respectfully submitted that federal law does not require that property taxation be based on current fair market value and that California's system of basing taxation of property upon its value upon acquisition is in accord with the equal protection clause.

The petition for certiorari ought to be denied.

Respectfully submitted,

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